

## REMARKS/ARGUMENTS

Upon careful and complete consideration of the Office Action dated September 20, 2004, applicant has amended the specification and claims which, when considered in conjunction with the comments herein below, are deemed to place the present application into condition for allowance. Favorable reconsideration of this application, as amended, is respectfully solicited.

The Examiner has made final the previous restriction requirement. Applicant has therefore deleted the non-elected claims, i.e. claims 6 and 7, without prejudice and reserve the right to file one or more divisional applications directed to the canceled subject matter.

The Examiner has also indicated that the subject specification did not contain a "Brief Description of the Drawings". Applicant has amended the subject specification to insert the section headings "BACKGROUND OF THE INVENTION", "BRIEF SUMMARY OF THE INVENTION", "BRIEF DESCRIPTION OF THE DRAWINGS" and "DETAILED DESCRIPTION OF THE INVENTION".

Claims 1-5 and 8-10 were next rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of the issues raised by the Office Action have been overcome by amendments to the claims in question. It is respectfully submitted that the claimed invention is now clearly set forth. It is accordingly respectfully requested that the rejection of the claims under 35 U.S.C. §112, second paragraph, be withdrawn.

Claims 1-5 were further rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 4,400,404 to Persi (hereinafter referred to as "Persi") in view of U.S. Patent No. 5,756,137 to Viviano et al. (hereinafter referred to as "Viviano et al.").

Before discussing the cited references, Applicant wishes initially to review the present invention. In the main embodiment in accordance with the present invention, as shown in Figure 1, the borders of the folded dough are juxtaposed but separately maintained with ingredients there between. A cordon is applied on the peripheral edge formed between the top and bottom borders, said top and bottom borders thus being maintained parallel to one another. This aspect of the present invention has the advantage to avoid any tension between the parallel faces of the food product. In contrast, sealed faces have to balance the internal pressure exerted by the ingredients. It is respectfully submitted that this critical aspect of the present invention is neither disclosed nor suggested by either Persi or Viviano et al., alone or in combination. That is, in both the teachings of Persi and Viviano et al., the borders of the food product are sealed together.

More particularly, the Examiner's attention is directed to Persi, column 3, lines 23-26 where it is set forth that the long edges (18) are in abutment with each other and the edges (10) have opposite halves in abutment. Thus, the short (16) and long edges (18) are crimped to one another.

With respect to Viviano et al., seals are formed around each serving of filling ingredients (18) by sealing pressing, causing regions (20, 21) of the dough layer (14) to sealingly join together to form sealed external edges (10). The fold in the dough layer (14) creates a strong seal along the side (24) of the pocket. Sub-pockets (30) are also formed (see column 4, lines 44-67 of Viviano et al.).

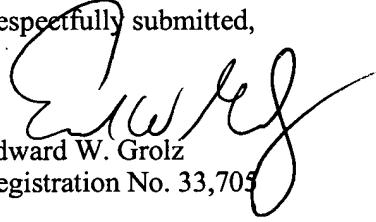
Again, in both the disclosures of Persi and Viviano et al., the edges of the paste are sealed intimately to form a pocket. This is quite different than the present invention in which the top and bottom borders are clearly distant to one another and sealed by the application of a cordon to the peripheral edge formed between the top and bottom borders.

Based on the differences between the claimed invention and the cited art as set forth above, it is respectfully requested that the rejection of claims 1-5 be withdrawn.

The Office Action further rejected claims 8-10 under 35 U.S.C. §103(a) as allegedly unpatentable over Persi. It is respectfully submitted that the critical aspect of the present invention as identified above would not have been obvious to the skilled artisan. For the same reasons set forth above, it is respectfully requested that the rejection of claims 8-10 be withdrawn as well.

Finally, it is further submitted that all the claims in the application as presently submitted contain patentable subject matter and a Notice of Allowance is earnestly solicited.

Respectfully submitted,



Edward W. Grolz  
Registration No. 33,705

SCULLY, SCOTT, MURPHY & PRESSER  
400 Garden City Plaza  
Suite 300  
Garden City, New York 11530  
(516) 742-4343

EWG/ns